



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**WETLANDS &
SUBAQUEOUS LANDS**

PHONE
(302) 739-9943

Diamond State Port Corporation
Port of Wilmington
C/o: Eugene R. Bailey, Executive Director
820 N. French Street, 4th Floor
Wilmington, DE 19801
Tax Parcel: 0615300006

Subaqueous Lands Permit: SP-101/20
Date of Issuance: 9/30/2021
Construction Expiration Date: 9/30/2026
Amended Date: N/A

SUBAQUEOUS LANDS PERMIT

GRANTED TO:

Diamond Sate Port Corporation

FOR THE FOLLOWING ACTIVITIES:

To construct a new shipping container port facility on the Delaware River. Initial construction activities include:

- **To remove all existing in-water structures, consisting of three (3) piers, pilings, water intake structure and portions of seawall**
- **To install 3,200 linear feet of new bulkhead, and to place approximately 20,107 cubic yards of backfill material**
- **To construct a 112-foot wide by 2,600-foot-long concrete wharf structure along the new bulkhead, resulting in the loss of approximately 5.5 acres of subaqueous lands**
- **To conduct new hydraulic dredging in an area approximately 4,000 feet in length, extending to the boundary of the federal navigation channel, removing approximately 3.3 million cubic yards of material, to a depth of -45 feet below mean low water to create a shipping access channel and berthing area**
- **To place up to 500,000 cubic yards of dredged material in an upland, onsite beneficial reuse area, and to dispose of the remaining dredged material at the Wilmington Harbor North and/or Wilmington Harbor South confined disposal facilities located in Edgemoor, New Castle County, Delaware**

LOCATED:

**In the Delaware River,
At the new Edgemoor Container Port,
4600 Hay Road,
Edgemoor, New Castle County, Delaware**

Pursuant to the provisions of 7 Del. C., §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 30th day of September, 2021, to conduct the above-referenced activities in accordance with the approved plans (18 sheets), as approved on September 29, 2021; and the application dated March 10, 2020, and received by this Division on March 13, 2020, and with subsequent information received on March 16, 2020, June 11, 2020, June 19, 2020, March 4, 2021, July 1, 2021, and September 24, 2021.

WHEREAS, Diamond State Port Corporation, has applied for permission to conduct the above-referenced activities to construct a new shipping container port facility; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Lands Permit General Conditions and the following Special Conditions:

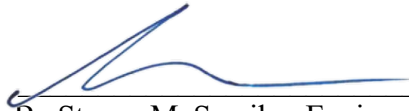
SPECIAL CONDITIONS:

1. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
2. This Permit is granted for the purpose of constructing a new shipping container port facility on the Delaware River. Any other use without prior approval shall constitute reason for this Permit being revoked.
3. In order to protect Atlantic Sturgeon (*Acipenser oxyrinchus*) and Shortnose Sturgeon (*Acipenser brevirostrum*), no in-water work shall occur from March 15th through June 30th of any year.
4. This Permit authorizes the depths below mean low water as specified on page 1, with an allowable, maximum 3-foot over-dredge.
5. Disposal areas shall be inspected prior to dredging and effectively maintained in a manner that prevents the entrance of the dredged material into any surface water or wetland.
6. All dredging activities, including the disposal of materials into any and/or all of the three disposal facilities as well as Cherry Island Flats shall be monitored in accordance with the attached DNREC-approved *Monitoring Plan for Construction Dredging and Dredged Slurry – Port of Wilmington Edgemoor Expansion* dated August 2021. Any observed activities or measured water quality parameters that are likely to result in or do result in exceedances of applicable Surface Water Quality Standards, shall be addressed in accordance with section 6.2 *Corrective Action* in the above-referenced plan.
7. Total suspended solids (TSS) in surface water shall be maintained at a maximum of 250 mg/l at a distance 200 feet down current from the cutterhead during active dredging activities. As a means of real-time monitoring, turbidity readings in nephelometric turbidity units (NTU) shall be collected on a continuous basis during active dredging activities. A turbidity reading of 170 NTU or less is expected to meet the 250 mg/L TSS water quality performance standard. Exceedances

of this permit condition shall be addressed in accordance with section 6.2 *Corrective Action* in the DNREC approved monitoring plan.

8. Total suspended solids (TSS) in surface water shall be maintained at an average concentration less than 3,000 mg/L (with an instantaneous maximum concentration of 4,000 mg/l) at any and/or all three CDF effluent discharge points. As a means of real-time monitoring, turbidity readings in NTU shall be collected on a continuous basis during active effluent discharge periods. A turbidity reading less than 1,700 NTU (with an instantaneous maximum reading of 2,200 NTU) is expected to meet the TSS water quality performance standard. Exceedances of this permit condition shall be addressed in accordance with section 6.2 *Corrective Action* in the DNREC approved monitoring plan.
9. The Wetlands and Subaqueous Lands Section (WSLS) shall be notified within 24 hours of any monitoring events where the turbidity levels exceeded the NTU limits specified in Conditions 7 and 8 above.
10. All dredging and disposal shall be conducted in a manner consistent with sound conservation and water pollution control practices.
11. All dredging and construction activities shall be performed in a manner that minimizes impacts to navigation.
12. A post-dredging bathymetric survey of the dredged area, showing depths relative to mean low water, shall be submitted to DNREC WSLS in both digital and plan form within 60 days of the completion of the dredging.
13. There shall be no movement of equipment within subaqueous lands not specifically authorized by this Permit. Any such areas disturbed shall be returned to preconstruction conditions/elevations and appropriately stabilized.
14. Compensatory mitigation for the loss of 5.5 acres of public subaqueous lands shall be provided in accordance with the attached DNREC-approved *Port of Wilmington – Edgemoor Expansion State of Delaware Compensatory Mitigation Plan* dated September 24, 2021. Final construction plans for both the State-required mitigation and the Federally-required mitigation shall be submitted to DNREC WSLS for review and approval prior to construction.
15. DNREC WSLS shall be provided with a copy of all status and/or monitoring reports generated and submitted to the US Army Corps of Engineers (USACE) and/or other federal agencies associated with any approved Federal Compensatory Mitigation Plan for this project.
16. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, and any New Castle County-required erosion and sediment control practices to minimize entry and dispersal of sediment and other contaminants in surface waters.
17. The work authorized by this Permit is subject to the terms and conditions of all appropriate USACE authorization.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this 30th day of September 2021.



By Steven M. Smailer, Environmental Program Administrator
Division of Water

Katie Esposito

Katie Esposito, Environmental Scientist
Wetlands and Subaqueous Lands Section



STATE OF DELAWARE
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GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the Permit conditions, the final stamped and approved plans, and with the information provided in the Permit application.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
8. The issuance of this Permit does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.
10. This Permit authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Permit being revoked.
11. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The permittee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the permittee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The permittee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Permit. The permittee may file a construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer the Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. Failure to comply with any of the terms or conditions of this Permit may result in enforcement action which could include the revocation of this Permit and subsequent restoration of the site to preconstruction conditions.